

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 93-0618 CS  
Controlled Substance Excise Tax  
For The Tax Period: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Controlled Substance Excise Tax - Possession**

**Authority:** IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

**II. Tax Administration - Interest**

**Authority:** IC 6-8.1-10-1.

The Taxpayer protests assessed interest.

**III. Tax Administration - Penalty**

**Authority:** IC 6-7-3-11.

The Taxpayer protests assessed penalty.

**STATEMENT OF FACTS**

The taxpayer was arrested on July 15, 1993. The taxpayer, who was fourteen (14) at the time of the incident, was a passenger riding in a car that was taken and driven by another juvenile. While the juveniles were joyriding in a blue 1985 Buick Riviera, they were stopped by a Ft. Wayne police officer for not using headlights. A routine stop revealed that the taxpayer was driving the

stolen motor vehicle illegally. While doing an inventory of the contents in the automobile, before it was impounded, the police officer noticed a card board golf ball box on the front seat beside the driver which contained two plastic bags of marijuana totaling 55.2 grams in weight. The taxpayer was arrested for possession of marijuana, and the Department as a result issued its assessment on August 5, 1993. A motion was filed, and an order was issued on August 26, 1993 by the Allen Superior Court Family Relations Division dismissing the marijuana charges.

Additional facts will be provided as necessary.

## **I. Controlled Substance Excise Tax - Possession**

### **DISCUSSION**

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer must prove by a preponderance of the evidence that he neither possessed, nor delivered, nor manufactured the marijuana upon which controlled substance excise tax was imposed. Taxpayer, in this case, has shown that he did not. Thus, taxpayer is not responsible for controlled substance excise tax assessed by the Department.

### **FINDING**

The taxpayer's protest is sustained.

## **II. Tax Administration - Interest**

### **DISCUSSION**

The taxpayer protests the imposition of interest on its assessment. Indiana Code 6-8.1-10-1 states in pertinent part:

(a) If a person. . . incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment,

The Department determines that taxpayer has not incurred a deficiency in this case, so taxpayer is not subject to interest.

**FINDING**

The taxpayer's protest of interest is sustained.

**III. Tax Administration - Penalty**

**DISCUSSION**

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

The Department determines that taxpayer has not incurred a deficiency in this case, so taxpayer is not subject to penalty.

**FINDING**

The taxpayer's protest to penalty is sustained.